

Series of Questions Addressed to the Eminent Scholar Ata Bin Khalil Abu Al-Rashtah,
Ameer of Hizb ut Tahrir through his Facebook Page (Fiqhi)

Answer to Question:

**The Difference between the Land Title (*Raqabah*) when it is for
the State and when it is for the Individual**

To: Suad Abed

(Translated)

Question:

Assalamu Alaikum Wa Ramatullah Wa Barakaatuhu,

Pardon me, in the book of the *Economic System in Islam* by the honorable scholar Taqiuddin an-Nabhani, may Allah have mercy on him, he talked about the Kharaji land and the 'Ushri land.

My question: What is the difference between the land title (raqabah) and its benefit when they are for the individual and when the land title (raqabah) belongs to the state and its benefit to the individual?

Thanks for the clarification.

Answer:

Wa Alaikum Assalam wa Rahmatullahi wa Barakatuh,

Land according to the Ahkam Shariah (Islamic rulings) is of two types: Kharaji land and 'Ushri land. Both types can be exchanged through sale, purchase or granted as gift, and are inherited from their owners because they are a real property of the owner and it applies on them all the Ahkam of ownership. And there is no difference between them except in two things, the first one is the owned property itself, and the second is the right due on the land:

1- As for the owned property, the owner of the 'Ushri land owns its land title (raqabah) and its benefit, and the owner of the Kharaji land he owns its benefit only without owning its land title (raqabah). This means the owner of the Kharaji land cannot carry out any Hukm Shar'i which one of its conditions for validity is the ownership of the property, but the owner of the 'Ushri land can do it. For example, endowment (Waqf) requires the ownership of the property to be endowed; therefore, if the owner of the 'Ushri land wants to endow the land he owns, he can do it any time he wants, because he owns its property that is its land title (raqabah). But if the owner of the Kharaji land wants to endow the land that he owns, he cannot because endowment requires for the one who wants to endow a land that he owns it. However, the owner of the Kharaji land does not own the property (i.e. the title) but owns its benefits because its title belongs to Bait ul-Mal (State Treasury).

2- As for the right due on the land, there is 'Ushr (one tenth) upon the 'Ushri land, and Kharaj upon the Kharaji land, and the difference between 'Ushr and Kharaj is as follows:

- 'Ushr is taken from the harvest of the land. This means that the State takes from the land's farmers one tenth of the actual production of the land if it is irrigated naturally by rain water, but it takes half of the tenth of the real production if the land was irrigated artificially by a waterwheel or other similar means. Muslim has narrated from Jabir that the Messenger of

Allah (saw) said: «فِيمَا سَقَّتِ الْأَنْهَارُ وَالْعَيْمُ الْعُشُورُ وَفِيمَا سَقَى بِالسَّائِيَةِ نِصْفُ الْعُشْرِ» “One tenth is put on what is irrigated by the rivers and rain and half of the tenth is put on what is irrigated by the waterwheel.” This tenth is considered a Zakat and is placed in the Bait ul-Mal, and it is not paid except to one of the eight categories mentioned in the Qur'anic verse: **«إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَامِلِينَ عَلَيْهَا وَالْمَوْلَفَةَ قُلُوبِهِمْ وَفِي الرِّقَابِ وَالْغَارِمِينَ وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ فَرِيضَةً مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ لِّفُقَرَاءِ وَالْمَسْكِينِ وَالْعَامِلِينَ عَلَيْهَا وَالْمَوْلَفَةَ قُلُوبِهِمْ وَفِي الرِّقَابِ وَالْغَارِمِينَ وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ فَرِيضَةً مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَكِيمٌ»** “The alms are only for the poor, and the needy, and those who collect them, and those whose hearts are to be reconciled and to free the slaves, and the debtors, and for the way of Allah (Jihad) and for the wayfarers; a duty imposed by Allah.” [At-Tauba: 60].

It is not taken except from the four food categories as Al-Hakim, Al-Baihaqi and At-Tabarani reported through the Hadith of Abu Musa al-Ash'ari and Mu'adh that when the Messenger of Allah (saw) sent them to Yemen to teach people the Deen, he (saw) said: **«لَا تَأْخُذُوا الصَّدَقَةَ إِلَّا مِنْ هَذِهِ الْأَرْبَعَةِ: الشَّعِيرِ، وَالْحِنْطَةِ، وَالزَّبِيبِ، وَالتَّمْرِ.»** “Don't take the zakat or charity except from these four things: Barley, wheat, raisins and dates.”

- However, Kharaj is that which the State takes from the landlord; a certain quantity that it estimates and defines according to the usual estimated production of the land, rather than its actual production. Kharaj is estimated on the land by as much as can be afforded from it without bringing injustice neither to the landlord nor to the Bait ul-Mal. It is collected every year from the landlord whether it was planted upon or not and whether it was fertile or barren. Abu Yusuf narrated in Al-Kharaj from Amru bin Maymun and Haritha bin Mudhrab: **(بَعَثَ عُمَرُ بْنُ الْخَطَّابِ رَضِيَ اللَّهُ تَعَالَى عَنْهُ عُمَانُ بْنُ حَنِيْفٍ عَلَى السَّوَادِ، وَأَمَرَهُ أَنْ يَمَسَحَهُ، فَوَضَعَ عَلَى جَرِيْبِ عَامِرٍ، أَوْ عَامِرِ، مِمَّا يُعْمَلُ مِثْلُهُ، دِرْهَمًا وَفَقِيْرًا) Umar bin Al-Khattab sent 'Uthman ibn Hanif to the land of Iraq and he ordered him to survey it, and put one Dirham and one Qafeez" (about 16kg) on each Jareeb (a patch of arable land) whether it was cultivated or overflowed with water, but could be usually used.** Kharaj is placed in the Bait ul-Mal in a section other than that of zakat. It is spent on all the aspects that the State decides, in the same way as the other properties of Bait ul-Mal.

I hope this is sufficient.

Your brother,

Ata Bin Khalil Abu Al-Rashtah

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The link to the answer from the Ameer's Facebook page:

<https://web.facebook.com/AmeerhtAtabinKhalil/photos/a.122855544578192/1002717886591949/?type=3&theater>

The link to the answer from the Ameer's Google Plus page:

<https://plus.google.com/u/0/b/100431756357007517653/100431756357007517653/posts/XvPfWHvQLFZ>